IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 4800 of 2005(U)

AS.130/2002 of SUB COURT,NEYYATTINKARA
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PETITIONER:

B.PANKAJAKSHY PILLAI,
RESIDING AT LEKSHMIVILAKOM VEEDU,
THENGAPPURA LANE, PETTAH P.O.,THIRUVANANTHAPURAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY THE COMMISSIONER OF LAND REVENUE,
PUBLIC OFFICE BUILDING, MUSEUM JUNCTION,
THIRUVANANTHAPURAM.

2. BHAGAVATHI PILLAI DEVAKI AMMA,
MANNAMTHOTTATHU PUTHUVAL PUTHEN VEEDU,
MARAYAMUTTOM, PERUNGADAVILA VILLAGE.

R1 BY ADV. SRI. SHYSON P. MANGUZHA, GOVT. PLEADER.
R2 BY ADV. SRI.G.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 4800 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PATTA BEARING NO.L.A.ii 2/77 ISSUED BY THE TAHSILDAR, NEYYATTINKARA.

EXT.P2 : TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER UNDER SECTION 21(8) OF THE LAND CONSERVANCY RULES, BEFORE THE 1ST RESPONDENT.

EXT.P3 : TRUE COPY OF THE SAID PETITION TO CONDONE DELAY FILED UNDER SECTION 5 OF THE LIMITATION ACT FILED ALONG WITH EXT.P3 REVISION PETITION DT. NIL.

EXT.P4 : TRUE COPY OF THE JUDGMENT DT.19.01.02 IN OS NO.249/2000 ON THE FILE OF THE 2ND ADDL. MUNSIFF'S COURT, NEYYATTINKARA.

EXT.P5 : TRUE COPY OF THE COMMUNICATIO DT.26.10.04 BEARING NO.LR(J3) -38174/04 ISSUED BY THE 1ST RESPONDENT.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 4800 OF 2005

Dated this the 17th day of July, 2007

JUDGMENT

Under challenge in this writ petition under Article 227 is Ext.P5 communication issued to the petitioner who was the revision petitioner before the Board of Revenue in Ext.P2 Revision Petition filed under Rule 21(8) of the Land Assignment Rules. Ext.P5 is to the effect that Ext.P2 revision cannot be entertained since condonation of delay which has been caused in the matter of filing Ext.P2 will not be justified.

2. Heard Sri.V.P.K. Panicker, counsel for the petitioner and Sri.G.Sudheer, counsel for the respondent and also the learned Government Pleader. Drawing my attention to Rule 21(8) of the Kerala Land Assignment Rules, 1964 the learned counsel for the petitioner submitted that since the petitioner was not a party to the impugned patta, period of limitation started running against him only from the date of his knowledge regarding the patta. Construing the matter in that way, it will have to be seen that there was no delay at all. It was only by way of abundant caution that the application was filed for condonation of delay. The Board of Revenue is not justified in taking the view that the condonation of delay will not be justified.

3. The learned Government Pleader would submit that since the

Board of Revenue was exercising statutory power, the order is justified since the statute in question does not confer power to condone delay if the revision petition is filed after two years.

4. At the very outset, endorsing the submission of the Government Pleader, Mr.G.Sudheer submitted that upsetting Ext.P4 judgment dismissing the suit for partition filed by the petitioner will not be proper for three reasons:

i. A regular appeal has already been preferred by the petitioner and the same is pending.

ii. It is not on the ground of the impugned patta, Ext.P1 alone, that the suit was dismissed.

iii. The respondent has executed sale deeds in respect of the property in favour of children, who are defendants 2 and 3 who have now put up substantial buildings on the property. Upsetting Ext.P4 will cause prejudice to them.

5. It will be stated at once that I do not propose to go into the issue which is seen decided under Ext.P4. After all, regular appeal is pending against Ext.P4 and court of appeal will decide those issues. In this Writ Petition, I am concerned only with the legality and correctness of Ext.P5 communication. Ext.P5 communication which visits the petitioner with civil consequences is not preceded by a hearing. I would

have been inclined to quash Ext.P5 on that reason alone. But having examined the statutory scheme, I feel that petitioner's remedy even if she is having genuine grievance that the patta and assignment order are bad was to prefer an appeal to the RDO. I relegate the petitioner to the remedy by way of appeal. Lest Ext.P5 should stand in the way of an appeal being entertained, I quash Ext.P5 also. It is made clear that I have not stated anything affecting the merits of the issues which were decided under Ext.P4. If so advised, the petitioner will file an appeal within one month from today. If the petitioner comes to prefer the appeal and an application for condonation of delay, orders should be passed on both the appeal and the application only after inviting objections from the respondent and after hearing them.

PIUS C. KURIAKOSE, JUDGE

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